





ALBANY DEMOCRATIC REFORMER

no. 7

Volume I

(Embodying Essays concerning Governmental Reformation)

Number VII

NOTE.

This extra number of the Reformer is chiefly occupied by the remaining essays of "E. P. H."—a signature now well known as that of Mr. Hurlbut, of New-York, formerly of Herkimer—together with communications from Gerrit Smith of Madison, and Hugh T. Brooks, (one of the State Executive Committee,) of Wyoming county. The preceding essays of Mr. Hurlbut were copied from the New-York Evening Post into the Democratic Reformer of the 1st January, 1814; at which time we quoted the strong opinion expressed by the Democratic Review, in reference to those essays: And we may add that the strongest positions were taken by Mr. H. in those first-published articles—positions of *principle* which would meet with general concurrence among democrats, whereas greater diversity of opinion probably exists respecting portions of the matters of *expediency* to which some of the present communications chiefly allude. But there is little space and less necessity for comment on any of the articles of either of the writers above mentioned; as the gentlemen are abundantly endowed with the power of expressing plainly their well-considered sentiments. We will merely repeat, however, that "it cannot be expected that all friends of reform will concur in every position assumed by these and other writers whose essays on constitutional questions have been already published." Whatever differences exist, discussion will serve to elicit truth, and those who seek only the *truth* will never fear discussion. It will be seen that, in all the articles embodied in the various numbers of the 'Democratic Reformer,' the question of Constitutional Amendment is discussed on abstract principles, without reference to partisan divisions.

HENRY O'REILLY.

THE FOUNDERS OF THE REPUBLIC AND THE REFORMERS OF ITS ABUSES.

It would be profitable, if our limits would permit, to trace the gradual growth of free principles in this country—to contrast the fears and doubts of our Revolutionary fathers respecting the capacity of mankind for self-government, with our present condition now that man is proven, by a fair experiment, to be his own "prophet, priest and king." Nurtured as were our ancestors, under the laws of Great Britain, it was natural enough that they should have continued them after their independence was achieved—and that we should remain, after our political bonds were severed, the moral colonists of the mother country. American lawyers were students of the English system of jurisprudence which, at the time of the Revolution had undergone the most skilful arrangement, and, at the hands of learned commentators, had received such adorning and polish as that its defects were concealed, and its merits rendered conspicuous and striking. Prejudiced by their legal education, our lawyers readily acquiesced in the opinion that the common law was "the perfection of human reason," while the people believed that the English government was the best and freest in the world. Perhaps, in the comparison with the laws and institutions of other countries, at that time, the laws of England merited such high eulogium.

It must also be borne in mind that the revolt of the colonies from the parent country, arose more from a pride of self-government than from a desire for legal reform; more from a love of national independence than from a profound scrutiny into the defects of the English system of laws; and it may be readily supposed that the main features of the British institutions would be left among us after the establishment of our independence. Such was the fact.

Most of the states adopted the common law and statutes of England, except when contrary provisions were made by their constitutions and statutes, and no distinct code of laws has ever been adopted, to the exclusion of the common law of

England, by any of the states of the American Union, save one only.

I would not attempt to derogate from the merits of our revolutionary ancestors. Their's was a vast labor; never so much was done before by one generation for human rights and liberty as they accomplished. But, after all, they left us a mighty work to do, in perfecting a code of fundamental laws in harmony with the principles of free government, as entertained by enlightened Americans.

They gave us the germ of free institutions, which experience only could expand into life and maturity. They erected a mighty framework, whose main pillars were worthy of the great temple of Liberty; but the minor parts were composed of foreign materials, gathered from British institutions, which it is our duty and privilege to reject, as our experience shows them to be out of harmony with the main design of the political fabric.

It is well known that the framers of the Federal Constitution doubted of the success of their experiment in free government; that many of them supposed that the republic would soon glide into a monarchy of the British type; and in that view the nearer our republican institutions corresponded at the outset with those of the other country, the less would the shock be felt when they gave way to monarchical rule. The debates of the Convention, as reported by Mr. Madison confirm this view.

The British Constitution was there eulogised by several of the most distinguished members of that body, and it was expected by them that this government would finally end in a like form. While Mr. Pinckney expected this result he postponed it for a long time. Mr. Hamilton acknowledged that he thought unfavorably of republican government, but addressed his remarks to those who thought favorably of it, in order to prevail on them to tone their government as high as possible. He looked to the British government as the best mode for combining public strength with individual security.

He could not rely upon pure patriotism, and agreed with Mr. Hume, who pronounced all that influence on the side of the crown which went under the name of corruption, as an essential part of the weight which sustained the equilibrium of the British Constitution.

Gouverneur Morris seconded a motion allowing the President to retain office during good behavior, saying that was the way to get good government.

Dr. Franklin thought there was a natural inclination in mankind to kingly government, and he was apprehensive that the government of these states would end in a monarchy. Elbridge Gerry thought Democracy the worst of all political evils.

The constitutions of the General Government and of the States were framed in fear and dread of the experiment of confiding power to the people, by men who were without the light of experience except what history unfolded of the disasters which had attended all former republics. In this state of hesitation and doubt, the British Constitution appeared like an ark of safety. The State of New-York adopted it almost *en masse*. We took her omnipotent Legislature; we mimicked her two houses of parliament; we adopted the common law and statutes of England for the law of the land. We set up her courts of common law, and arranged them upon the same basis; we adopted her chancellor and her equity jurisprudence; and we have even been better satisfied with these arrangements and laws than the British

themselves, since they have indulged in very many salutary reforms which have not yet penetrated into this country.

In all this we may have adopted many wise institutions and salutary laws—but what I intended to say was, that at the time we made choice of these things, we had no true option—we knew of nothing better. We had no experience of our own; our form of government was a hazardous experiment; men did not permit themselves to believe without doubt in the capacity of our race for self-government—and so whatever was done was a step in the dark, a mere venture, without at all settling the principles upon which free government is to rest forever.

We have at length solved the doubts and dismissed the fears which harrassed “the founders of the Republic”—and after more than half a century of fruitful experience, we ought to be permitted to take our stand in convention, and to expound the true philosophy of Government as we have proved it by experiment. We can come to the work with a light which the wisest men among the founders of the republic did not possess—the light of experience which teacheth all true wisdom, and we can rid ourselves of the last vestige of injustice under government.

E. P. H.

THE “CREDIT SYSTEM.”

During the two last sessions of the Legislature an occasional petition was presented to that body praying for the abolition of all laws for enforcing the collection of debts. This was a startling proposition to those who had not reflected upon the subject, and compared the actual operation of existing laws with the objects which they were designed to effect.

The petitioners have been censured by some as persons seeking to overthrow one of the greatest conservative props of the social condition, and have been ridiculed by others as devoid of reflection and judgment. I apprehend that their opposers have judged them wrong, since I am persuaded that they are persons who have only mistaken the remedy for a very great grievance, to wit: the inefficacy and instability of our laws affecting the sacred right of property.

Thus did the petitioners reason. Our laws profess that if one man confide his property to another on the credit of the latter, that effectual remedies shall always be found in the courts to enforce a prompt and full satisfaction. There shall be neither a denial nor a delay of justice. The reluctant debtor shall be made willing, and the fraudulent one shall be punished. The property of the debtor shall always be regarded as a fund held in trust by him for the benefit of his creditors, out of which each shall be satisfied as he comes in his turn for payment. That if the creditor be not satisfied with the maxims of the common law which favor the diligent and prefer him to the forbearing creditor, he may invoke the interference of the Court of Chancery, where a more liberal view is entertained of his rights, and where, in the distribution of the debtor's assets, it is the standing maxim that “equality is equity.” Moreover, if false and fraudulent representations have been made in the obtaining of credit, the criminal courts are open to the complaint of the sufferer, and the fraudulent bankrupt can there be indicted and condemned to prison for the offence.

Here, say the petitioners, the law holds out all that is required to assure the citizen that he may safely deal on credit with his neighbors. He does so—and soon has occasion to demand that the courts shall verify these professions. He institutes legal proceedings—and finds to his surprise that he has himself to bear nearly the entire burthen of their expense. Instead of a speedy judgment, he finds the practice entangled by subtle and unnecessary forms which consume some months before he obtains judgment; and then he finds that the debtor interest has conspired to obtain by statute a further delay before execution can be issued. Meanwhile the debtor has made an assignment of all his effects

to a friend, who may or may not be responsible, and has preferred some creditors before others—whereby his execution is defeated, and if he be not in the favored class of creditors his demand is lost.

If he trusted to a mortgage, some statute enacted after he had received it, provides that the debtor shall have a year to redeem the estate after he should have been foreclosed, and that the creditor shall bear the chief part of the expense of the proceedings—which sometimes will absorb all the interest or profit made by the loan. Or, if he has trusted some citizen of a new state, a set of stay laws, or laws compelling the creditor, after great delay in enforcing his demand, to take the property of the debtor at an appraisal, will prevent him from regaining his money. And if amid all these embarrassments a creditor still continues to pursue the legal remedies held out for the collection of debts—a general bankrupt law, having a retroactive operation, will be brought to bear upon him by act of Congress—and he who has survived stay laws, appraisal laws, suits in chancery, delayed executions, redemption under mortgage foreclosures, fraudulent assignments, and state insolvent laws, now turns with despair from his hopeless assets and looks to the general assignee in bankruptcy for those gracious and munificent dividends which are to furnish the means of paying his own debts, and of supporting his family. In despair he exclaims, “from all laws for the collection of debts, good Lord deliver us!” He attributes to them the loss of his fortune. Had he not confided in them he would not have suffered so much. He trusted to the laws—he believed in their efficacy. But for them he would only have trusted men of the most sterling integrity and honor, and of the greatest skill and judgment. He would then have run no risk, except of the life of his debtor, and in this state of mind he rejects all legal remedies. But he reasons badly—as men are apt to do while smarting under a sense of both public and private injustice. After all, that which has given him offence is a low state of public morals—lax notions of the obligations of the debt—too slight an appreciation of the sacredness of the right of property—and the wretched legislation of both the state and national governments, which interfere to defeat the just right of the creditor as often as a large portion of our population becomes embarrassed by, and are pressed for, the payment of their debts. He surely would not wish to deal in a community upon honor only, where the most honorable men, the legislators, pass retro-active laws, delaying and often defeating his just claim? If the legislator will do this, what will not the constituent do? He surely would not have the laws silent when some honorable man had got the entire confidence of another, obtained the best portion of his estate, and refused to account for a single farthing. He would allow *some* remedy—the mob, the dirk, or the pistol. These would be taken whether allowed or not; and their havoc of life, and limb be justified by the public sentiment. This, then, is but the substitution of a mob for a sheriff, and the dirk for an execution; sad remedies these for the collection of debts.

I fear these petitioners have not considered the true function of government, which is to prevent and punish moral wrong, and to redress all grievances arising from it.

The obligation of debt is a moral one; any injustice respecting it demands the notice of the state as much as any other offence. To have and enjoy property is a natural right, demanding the same protection as other rights. To give credit, to trust to man, is as instinctive as life itself; it is the very incident of our nature, it is inevitable, irresistible; and the more noble and generous our nature, the stronger and more imperative is the impulse in this direction.

A man has a right to be protected in that which grows out of his very nature and social relations. It is for this that government exists, “to prevent men from hurting one another.” So far from abolishing laws acknowledging the sacred obliga-

tion of debt, and granting remedies for enforcing them, we need to reform the present code, in favor of the creditor, to punish fraud by severe penalties, to grant more expeditious remedies, to inflict the burthen of expense incident to non-payment upon the debtor, to abolish assignments giving preferences, and to deny to the legislature the power of changing the remedies for the enforcement of rights in such a manner as in the least, to impair the right itself.

The first step in this reform must be taken in the Constitution, that most prohibit retro-active laws. And the second step must be to provide against a change of remedies for enforcing rights, so as in the least to impair vested rights. Now the provision in the Constitution of the United States which enjoins a state from passing any law impairing the obligations of contracts, does not come up to our requirement, since that provision is construed not to reach laws which merely affect the remedy. Yet the remedy gives to the right all its value. A right without a remedy is a mockery; take away all remedy, and a right becomes a creature of sentiment merely, and not of law. If you make the remedy more difficult, expensive or tardy, you so far diminish the value of the right, as by these means you have embarrassed its enforcement.

Full protection of the right is not obtained by the constitution until the remedy is preserved by it from legislative invasion. I am aware that to ensure this protection is difficult—but we can at least go so far as to prevent the recurrence of such legislation on the subject of remedies as the convulsions of the country have occasionally brought upon us. In mercantile phrase, we can post up in the constitution what is written in the journal of our experience. We can prohibit such shocking innovations upon remedies as the miscalled legal reform of 1840, whereby the burthen of enforcing his just claims was unexpectedly thrown upon the creditor, and the mortgagee was compelled to sacrifice all he gained from his investment in order to be restored to his former estate. We can prohibit such laws as that which enabled mortgagors to redeem after they were foreclosed, no such privilege being shown when the debt was created. And after doing so much by the fundamental law, we must invoke the legislature to reform the statutes affecting the relations of debtor and creditor, and gain for them, if possible, a more speedy and equitable adjustment in our judicial tribunals.

E. P. H.

THE ELECTIVE FRANCHISE.

Why not allow every human being to vote, who is physically competent to perform the act? Because the vote involves questions of high moral concern, and no one but a rational moral being of a certain supposed degree of maturity and culture is capable of discharging this great function of a free citizen. The constitution limits the right of suffrage for this cause, and denies its universality.

The male citizen only can vote; this excludes one-half of mankind at once. In the view of the constitution woman is incompetent to vote, either from some moral or intellectual deficiency, or for lack of interest in state affairs—or for some other reason which has not been suggested unless it relate to the peculiar combination of the mental faculties of her sex. At any rate she cannot participate in the exercise of the elective franchise, and the friends of universal suffrage have hitherto acquiesced in her disfranchisement. There are a few dreamers, however, who murmur at this—but we answer them with the wisdom of our ancestors, the weakness of the fair sex, and the words of the constitution—so let them dream on.

The colored race in general are excluded from voting. It is assumed that they are far inferior to our race in intellectual endowment and culture, and at present, are unfit to be trusted with the exercise of this right. I do not propose to discuss the merits of this provision of the constitution, since it opens too wide a field of enquiry, and is which he is presumed to be endowed, to suppose

not necessary for the purpose of my argument.

The voter must be of the age of twenty-one years. Why? Because this the law regards as the age of maturity. These years have so far perfected the physical, intellectual and moral man, that he is supposed to be capable of acting his part in life. He has now enjoyed opportunities of study, observation and reflection.

He has passed through certain stages of intellectual culture and moral training. He is freed from parental government, and sent abroad into the world to act for himself.

The parent confides in his capacity, and so may the state, since he is presumed to be an enlightened moral being, whose tendencies are to truth and virtue. But if this presumption shall be rebutted by such immorality as leads to a conviction for an infamous crime, he is excluded from voting, because it is thereby established in the most conclusive manner that he is wanting in that ordinary moral endowment and culture which is necessary to enable him to participate in self-government.

The voter must also have been a resident of the state, and of the district where he offers his vote, for a certain period. This is required in order that he may have become acquainted with the public affairs which are to be influenced by his vote, and with the candidates for office. Here there is a provision for opportunity to acquire information without which the citizen is presumed to be incompetent to vote.

Now these provisions convey to my mind no other idea than that the framers of the constitution designed to make the right of suffrage as extensive among the male sex as there was fitting intelligence and virtue. The provisions referred to, all savor of qualification: but the requisites are of an intellectual and moral kind only. The framers intended the voter to be a free, mature and enlightened moral being, and they designed to exclude as far as practicable, those who did not come up to their standard of qualification.

They had also in view the opportunities afforded in our common schools for all children to acquire the simple rudiments of learning, and they inferred that as there was scarcely an apology in any case for a neglect of these means of common education a totally illiterate adult citizen would hardly be found in the state after a short season.

I find no fault with the framers of the constitution, but rather honor them for the great and true principle in reference to the right of suffrage, which may be gathered from that instrument, to wit: that the qualification requisite for the voter is of a moral and intellectual kind. To take a proper part in government is but an exercise in morals; it is but to do right on a large scale; and every moral being is concerned in this, and has a right to be heard at all times, provided he is possessed of sufficient intelligence to act aright. Here the opponents of female suffrage find some difficulty; and the supporters of the property qualification encounter more.

So then the constitution requires a certain degree of moral and intellectual endowment and culture, and assumes that it is to be found in the constitutional voter. The only question to be raised then is upon the fairness of this assumption. Is the voter as enlightened as he is presumed to be? Ought we not to provide for some further guaranty in the case? We cannot test his actual intelligence, but we can enquire into the means whence he derives it? Instead of assuming that a white complexion, male sex, maturity of years, a certain period of residence in the state, and freedom from crime, are attended with the requisite amount of intellectual and moral endowment and culture, to render the citizen a competent voter, I would see that he possessed the humble means of ordinary enlightenment. I would exclude from the exercise of the elective franchise every man who could not read the English language with intelligence.

If it be urged that this would deprive of their votes a large number of persons, among whom were some good citizens and intelligent voters I

answer, so does every clause in the Constitution which requires any qualification whatever.

The qualification is adopted in every case with a full knowledge that many competent voters will be excluded by it, but, that so many dangerous ones will also be kept out as renders it proper.

But it is difficult to perceive that the requirement suggested would exclude many enlightened citizens from the polls; and it may be safely affirmed, that a great many questions of state policy would puzzle a totally illiterate man exceedingly. So that, on the whole, the state would not suffer by the loss of his vote; while, on the other hand, the qualification in question is one of such easy attainment, that thousands of illiterate persons would overcome their disability rather than forfeit the high privileges of the American elector. Indeed, it would seem that no more effectual means could be devised to stimulate every man to learn to read, than to make it an indispensable qualification for a voter.

E. P. H.

FREQUENCY OF ELECTIONS.

It may be worth our while to consider whether the frequency of our elections is not productive of more evil than good. They cannot occur without devolving upon the voter the duty of forming an opinion upon whatsoever public measures may be in agitation, and of selecting representatives to act upon them in accordance with his views. The theory of republican representation assumes that the constituent bodies have deliberated upon the measures of public policy which may be acted upon by the legislature, and that their representatives are possessed of their views and will faithfully carry them out.

If the constituent has failed in this, the relation between him and his representative assumes a character unknown to our institutions—the latter becomes an adviser and ruler of the people. We must assume then that in all instances of general legislation the people are prepared to accept and ratify the acts of their representatives because they intended them, and would themselves have enacted them in their primary assemblies, had such a procedure been lawful. In order then to preserve the relation in view, there must be a strong and decided public judgment, expressed in such manner as not to be misunderstood, upon every measure which is to be effected by legislation before the representative can be clothed with authority to act.

To this end the people must assemble and discuss measures of government; they must read and reflect upon whatever may be urged upon all sides, and thus obtain the requisite information to enable them to form an enlightened judgment. This is the labor of self-government, from which nothing but despotism or anarchy can save them. It is a great labor; it interferes seriously with private business; it calls for time for reading and reflection. And when the constituent has formed his opinions, he has performed but half his work. He has now to select an agent to act upon them.—Here again he is obliged to confer with his fellow citizens, and to choose from a list of candidates for office the most suitable men to carry out his views. In this list are men of all gradations of intellectual and moral character—and great diligence is necessary to secure a proper choice. Now all this labor is saved to the subject of an arbitrary prince—so that in a mere business point of view, it is doubtless a great economy to live under a pure despotism. But it cannot be saved to the citizens of a republic—and the only question is, in what manner they can arrange the representative system so as to ensure the discharge of their duties without their interfering seriously with their business and personal comfort. We have had some experience on this subject, and the complaint has become quite general that our citizens neglect to vote oftentimes, and in other respects show themselves indifferent as to public measures, and as to the men who are to represent them in the legislature. To this neglect and indifference is attributed the gradual decline of talent and moral worth, which it is

asserted is visible in men in office—and that unwise and unsteady legislation which has afflicted the state of late years.

No wonder that the citizen appears to neglect his duty in the respect we are considering.

In truth he does neglect it; we need not be mealy-mouthed about it, he sadly neglects the duties which our system of government as at present administered imposes upon him. But he has an ample apology for his apparent offence. He is obliged to commit it.

A republican cannot feast on air—he must live—must do business—must support his wife and children, and pay his debts. If he be a good and thorough patriot he makes a bad husband and father, and a sad man of business. You have so contrived the machinery of government, that if he watch the operations so as to be thoroughly intelligent respecting them; if he prepare himself as often as you call upon him, to judge of all the measures proposed, and assist to select the men who are to carry them out, he will do so large a business in the patriotic line, that it will engage the best portion of his time and attention.

As matters now stand, all the elective officers of the towns and cities are chosen annually—then we have a general election for legislative officers besides—making two exciting elections annually.—Nearly a month of preparation attends each election; and it is not difficult to see that an enlightened and conscientious citizen who really means to discharge his duty, and to see that no evil shall happen to the state, must consume a larger portion of his time in attending to these affairs than he can afford, if he have also the ordinary duties of life to discharge. The citizen would feel a great relief, if he could secure the purity and safety of government without this frequent resort to the ballot-box, and really it seems practicable. Let him properly restrict the legislative, executive and judicial departments by the constitution; let that instrument especially restrain, limit, and guide the power of the legislature; let it provide for the enactment of general lawsonly by that body; in a word, let the people once establish, by the constitution, those reasonable safeguards which are requisite to secure their rights and liberties, and then they can enjoy the repose which they have hitherto sought in vain under popular government.

Hitherto the democrat has enjoyed little peace. One political campaign is no sooner ended than another begins. He is willing to discuss measures at all times, but is reluctant to be incessantly concerned in choosing men for official stations. It is the interest of the public to have faithful and experienced public officers, which, amid the rapid succession of changes, cannot be obtained. He begins to doubt the inspiration of the maxims relating to "rotation in office." He likens public to domestic servants, and wonders when we have good ones why we should turn them away. He knows not what is to happen at each session of a legislature annually chosen and composed almost wholly of new members. He trembles when they assemble, lest the good of the past shall be undone, and new evils enacted by the assembled wisdom of the state. He is called upon to remonstrate and protest against paper money engines, new creations of state stocks, a crude reform in the legal code, or some other calamity which threatens from the halls of legislation. He can depend upon nothing—every law is unstable, every right insecure amid the change of parties and assumption of office by new and untried incumbents. Does he live for no other purpose than to verify the maxim that "the price of freedom is eternal vigilance?" Must he be a slave to liberty itself? Shall that which promised to redeem and bless him prove to be a burthen and a scourge? He may escape from most of these evils if he will examine into and correct their cause. He wants the security of an elaborate code of fundamental laws, which cannot be changed except by a convention from the people. His rights, interests and wishes are now exposed to violation at the will of the three great branches of the government. Under a constitution which

properly organized and restricted the legislative, executive and judicial departments, he could re-
pose in safety.

But so long as the legislature is omnipotent, so long as the executive power and patronage, continue to be great sources of corruption, so long as the judiciary is badly organized and we have no tribunal to test the constitutionality of laws, except the body which enacted them, so long as the frequency of elections and our incessant change of officers render all public functionaries the objects of suspicion and concern, there will be occasion for unceasing endeavor and watchfulness on the part of every good citizen; and with all his pains he will fail of securing the public safety.

However, with such constitutional safeguards as have been hinted at by the Reformers, and with elections at periods of two or three years, the citizen will be so greatly relieved from the cares in question, and gain so much security to private rights and such purification for the government, as that from henceforth his duties and relations to the state will be converted from an oppressive burthen into the source of his highest pleasure and improvement.

E. P. H.

SOME OF THE EVILS OF SPECIAL LEGISLATION.

At every session of the legislature there is appointed a standing committee on claims. At every session there appears before the committee a swarm of applicants to present their demands against the state.

One branch of that interesting body, the lobby, is composed of these claimants. Some of them are inspired with honest notions, and really intend to ask only for the allowance of a just claim, while others avail themselves of the opportunity to press the most iniquitous demands upon the treasury, which has come to be regarded as the most uncomplaining and easy victim that can suffer injustice. A portion of these claimants are contractors upon the public works; they have taken jobs at ruinous rates of compensation, and rely upon lobbying to make money out of them; or they have done a vast amount of extra work beyond their contracts, and it is high time they knew where their pay is to come from. Now the committee on claims is greatly puzzled to dispose of these claimants. They importune them in their rooms, in the streets, and in the lobby of the assembly chamber. They have creatures who are schooled in this species of advocacy—who know how to manage both the experienced and inexperienced legislator—and who can bring all sorts of influences to bear in the right direction upon the members. The committee are pressed with business—claims multiply—and really they ought all to be disposed of in some manner. The committee, in fact, know nothing of the whole matter, nor have they any proper means of enlightening their minds. They hear plausible stories from honorable men—they may take testimony—but may not hear the whole truth; they may determine the law, but not so well as a court; and settle facts, but not so well as a jury, or a board of referees. They may allow or reject a claim without investigating any question of law or of fact involved in it. Many a claim has been rejected annually for a great length of time, and has been allowed at last; and many more have been allowed upon the first application, that ought to have been rejected altogether. Here is difficulty enough—since injustice both to the state and the individual cannot but arise from this mode of procedure. Whence this method of obtaining redress against the state? It is borrowed from a feature of the British constitution. The king cannot be sued; he is presumed to sit and administer justice in the courts of the realm—and he cannot be both party and judge. Besides, it is too great condescension to submit to appear at the suit of a subject; and moreover, it is an impeachment of that awful sense of justice with which he is presumed to be endowed, to suppose

for a moment that he needs to be carried into the redress of a private grievance by a suit at law. He must be petitioned for redress and he will then grant it. We admire this feature of British sovereignty, and have adopted it. The state is our sovereign, and the sovereign must not be sued but petitioned unto. Hence a petition to the legislature, instead of a declaration in a court of justice; a committee on claims, instead of a judge and jury; a lobby inspired with the very genius of importunity, instead of respectable professional advocates; and the plausible tales of interested claimants told in the streets and the assembly chamber, instead of the unimpeachable testimony of truth-telling witnesses. Strange that this should have prevailed so long. If the state owe any man he can make it appear in this case, as in any other, in a court of justice.

If it do not owe him, he would be defeated in a court of justice, and ought to be any where else; but he might not be by the legislature. If the claim be not the subject of an action at law, it may be made the subject of a suit of equity; and surely, if the claimant is entitled to no redress, either at law or in equity, he ought to be silent altogether. Why should the state be held to pay any sum, when a citizen would not be? No different rule of justice can be upheld as between the state and an individual, than obtains between one citizen and another. It is absurd to hold any difference in the cases. When the state descends to deal with a citizen in a matter of contract, it throws off its sovereignty as to the matter involved, and becomes subject to all the liabilities which a citizen would incur in the like case. It is unjust to both parties to hold otherwise. Both may need the interference of a tribunal of justice, and it ought to be open to them. The just claimant ought to encounter no delay or embarrassment in enforcing his demand against the state; and the unjust one deserves to have his claim undergo the scrutiny of a competent tribunal. It is not beneath the dignity of the state to demand justice in the place where it is administered to the citizen. Often does the state appear there to enforce a right. It has constituted an officer, the Attorney-General, whose business it is to protect the state in all litigation in the courts. Why not allow him to contest the claims which are now presented to the legislature for adjustment?

The state cannot, of course, be questioned anywhere for a pure act of sovereignty; and it is not for such an act that a claim is ever presented. It is only where the state has dealt with the individual by contract, or has done or omitted some act in the management of property, by which a citizen sustained injury which can be atoned for by the payment of money, that a claim arises against the state. Now, in such a case, the shield of sovereignty is thrown away; the state is here on a level with the citizen, and ought to be treated in the same manner.

It seems, then, too clear for argument, that our practice, in this respect, is altogether wrong, and the sooner we reform it the better. Few doubt that the grossest injustice attends the settlement of private claims by the legislature, and that a legislative committee is the last tribunal that ought to be invoked in these cases. How, then, shall we dispose of the matter? Throw open the courts of law and equity to all complainants against the state who seek for a pecuniary recompence; and, by a clause to be inserted in the constitution, prohibit the legislature from interfering in any case of a claim where the courts have jurisdiction. This will remedy the entire evil complained of, and, in the course of time, save millions of the public treasury.

E. P. H.

REFORM CONVENTIONS.

No evil appears to be apprehended in Louisiana or New-Jersey from allowing the People to meet in Convention for reforming the Constitutions of those States.

CONSERVATISM AND REFORM.

The Reformers are endeavoring to preserve the natural rights of man in the social state, and to prevent their infringement by government and individuals. After all, they are simply the friends of public justice. What pillar of state do they threaten to pull down? Is it property? Command me to their doctrines for the protection of this right. They admit that exclusive property is the ordinance of nature; and they demand for it additional guarantees. They would not be plunged into public debt without the consent of the people to be given directly through the ballot box. So they ask for the incorporation of Mr. Loomis' resolutions into the constitution.

In the appropriation of private property for public use, as well by the state as by municipal corporations, they require greater safeguards than exist at present in behalf of private right. They advocate a diminution of offices, a judicial decision upon claims against the state, and an economical government, in order that property may be secure from onerous taxation, and that labor may be lightly burthened." They demand more speedy, efficacious and stable remedies for the enforcement of rights, and that the relations of debtor and creditor shall obtain a more equitable adjustment by the law of the land. Surely, the reformers are the only true conservatives in respect to the right of property, if it be their object to secure it as well from the depredation of the government as from private aggression.

True, they are jealous of executive power and patronage—because these are subject to abuse—and they clearly see that by restoring to the people whatever power they can conveniently wield, they secure for it a purer exercise. Here they aim at preserving the moral dignity of the state. Does the conservative desire its corruption?

The reformers would limit the powers of the legislature.

They choose between a constitutional government, and an omnipotent legislature. If the constitution does not define the limits of the legislative power—then are we subject to the absolute will of the legislature—and the only difference between our government and an European despotism is—that we prefer the despotic will of one hundred and fifty men chosen by ourselves, to that of one man born and educated a prince. Whereas if they are bad men the large number only increases the evil—and if good and enlightened, one man is a more effective agent for the happiness of the people, than a large number, since he can plan and execute with greater dispatch.

In the absence of a complete constitution, lawyers and judges are often driven to invoke "the spirit of our institutions" to shield us from the operation of unjust laws; they are obliged to attribute to the legislature an intention nowhere expressed; and to conclude, contrary to express language, that a law was not designed to operate in a particular manner, because it ought not to do so. Here the judges must legislate or the law will work injustice. It is difficult to define what is "spirit of our institutions," so often alluded to in legal argument. It is however certain, that whatever it is, it is not contained in the constitution. Doubtless it has a real existence—and it may be, that enlightened sense of right which resides in the public mind—which abhors injustice in every form—but which has hitherto been too indolent to write itself out in the fundamental law of the State.

It is to arouse this spirit to active enterprise—to bid it "write—write—in the constitution," until human rights shall find in that instrument a perfect guaranty against legislative, executive and judicial invasion, that the reformers now demand a share of public attention, claiming to be considered the only true conservative party in state affairs.

In their view, a free state exists only where the people retain to themselves, for their direct and in-

dividual exercise, all the power of government which they can conveniently and promptly wield; and when they delegate power, it is in every instance defined and limited in the Constitution. The office of the Constitution is not simply to name the agent who is to act for the people, but to clothe him with a limited authority, and set the bounds of its exercise. In order to exclude tyranny and oppression, all delegated power must be limited and restrained by the Constitution.

There is no more necessity for the social body to constitute an agent with unlimited power, than for an individual to do so in his private affairs. In either case, it arises from ignorance or negligence, and is usually attended with loss and injury to the principal.

The aim of true conservatism in government, is public safety and the security of private right. Is it not, then, a conservative measure to confine the legislative power within just and well defined limits? If so, the reformers are radically conservative in their measures, and put forth the true idea of a constitution for a free people.

There are persons, however, who are averse to all change, and who would allow corruption to work its own cure, or to endure forever. There are drowsy patriots who say "let well enough alone," without troubling themselves to inquire whether affairs of state are managed well or ill. There are citizens who profit by unjust laws, and who are bribed into acquiescence and contentment.

By them, new jobs upon public works, and fresh issues of state stocks, are far from being regarded as public calamities. The office holder, also, may dread any change, lest the public service should suffer by his removal.

The aged, who repine at the follies of the day, are still averse to reform, since they expect nothing good from the present generation; and the nervous and infirm dread the action of the people, since they expect a riot wherever two or three are met together. The rich man who is in terror of "a division of property every Saturday night"—and the poor man who hopes for promotion by sustaining the corruptions of government; these may conspire together, assume the name of conservatives, and oppose the contemplated reforms. With them, he may have a sound political creed who merely calls himself a democrat and denounces aristocracy by its title; who opposes all but "judicious tariffs," and sustains custom houses, because the merchant would otherwise have no means of getting his goods ashore; who advocates paper money provided it can be regulated, and would have a "regulator" of the same species which could regulate itself; who longs for the session of Congress, as if it would settle all private affairs, and for the next state legislature, to the end that something may be done for the man of business; who prays unceasingly for the passage of new laws and expects all things from their efficacy, and who cannot understand what men mean when they express a fear of being legislated to death, but who expects the legislature to breathe into the body politic the very breath of life. He would have mankind born, cradled and rocked by statute—and arise straightway and walk by means of the law thenceforth and forever. He would trust no man without a legislative act—nor believe him to be a true man unless he were endorsed by the state. An officer shall weigh his bread, count his potatoes and brand his beef. Faith he has not in princes, but in companies. Man is a social being, must exist in aggregate bodies, and so he must be incorporated! He shall not be known as the respectable Mr. Thomas Jones, but as "president, directors and company." The natural man must make way for the artificial one—so that art may triumph over nature.

If this be the true *conservative*, then may the Reformers yield their pretension to the title.

E. P. H.

[For the Democratic Reformer.]
THE RIGHTS AND WRONGS OF GOVERNMENT.

A state of public mind, in which suggestions, plans and efforts for the benefit of the human family may be candidly considered and duly appreciated—in which the truth “may have free course and be glorified”—is unspeakably desirable. It behoves us, therefore, to deprecate, and, as far as possible, remove whatever stands in the way of such a state. Our political parties are a great, and by far the greatest obstacle in that way: and hence, if these parties are, as is generally thought, ‘a necessary evil,’ among us who labors to make his countrymen wiser, better and happier, and who longs to witness the triumphs of candor and truth in every question which interests them, has but a cheerless prospect.

That so long as ours shall be a republican country, there will be political parties in it, occasionally or even continually, is neither to be denied nor regretted; but that such parties will necessarily interfere with the exercise of candor, with the progress of truth, and with the melioration of society, is not admitted. They undoubtedly will, if they are of the type of our past and present great political parties. But, we shall see in the sequel, that great changes are demanded in respect to the objects and duties of government; and that if these changes are adopted, our political parties, being necessarily conformed to them, will be rendered harmless.

Who can doubt that the political parties which have divided and agitated this nation, have exerted a tyrannical and pernicious influence on public sentiment, and greatly hindered the progress of truth and human improvement? The philanthropist who would undertake a good work upon the hearts and habits of his countrymen, must virtually ask leave of these political parties; and the work is sure to be frowned on by them if it is of a radically reformatory character: For if that be its character, it is necessarily alarming to parties which have nothing to hope but every thing to fear from advances in the public morals; and which look on inroads upon the prevalent selfishness, as weakening their cohesive principle and threatening their very vitality. How numerous are the philanthropic conceptions to which these parties have refused even a trial!—and how many wise plans of beneficence that have gone into operation, have been sullied or modified by their constrained accommodation to the demands of these parties, as to be rendered worthless. With what malignant jealousy, from the very first, has the growing change in the drinking usages of this country been watched by its political parties! and had not the temperance reformation been too powerful even for these powerful parties, it would have been crushed by them.

We make our loud and frequent boast of a free public opinion in this nation. No boast was ever more groundless. The public opinion of this nation is in the keeping of its political parties; and he will quickly be made sensible of the power and tyranny of those keepers, who shall attempt any decisive moral changes in this public opinion. Speculations, whether sound or unsound, in behalf of animal magnetism, phrenology, or homœopathy, do not alarm, because they do not affect our political parties. But let a wide-spread and earnest effort be made to enlist public sentiment in behalf of our persecuted and wasted Indian tribes—to stay the extermination of the Seminoles, and to give back to the Cherokee the home from which he was mercilessly and murderously driven—or let such an effort be made to enlist public sympathy for the African portion of our population—and it is soon found that our political parties are busy to maintain the public heart in all its selfishness and hardness. It is, in short, a just general remark, that such and such changes only in American society, American morals and manners, are allowed to be made, or even attempted, as our political parties approve of. It is, then, a question of the deepest interest how the American people shall rid themselves of this

giant enemy to free inquiry and to the success of moral truth.

Shall there be no political parties? They cannot be prevented. The remedy for the evil in view is not in this wise, but it is in giving to our political parties a different and a comparatively if not entirely harmless and even beneficial character. Can such a change be wrought in them? There is one way and but one in which it can; and that is by confining government within its legitimate range.

Our fathers, who gave us our republican forms of government, saw clearly that government should “derive its powers from the consent of the governed.” This doctrine, rightly interpreted, was a great and glorious advance in the world’s history; but that the exercise of these powers should be limited to a very few objects, and that the people should be left without the interference of government to take care of themselves and their interests, is a truth which seems to have been nearly as much hidden from them as from their predecessors. A free government—a free body politic—rather than a free individual—was their aim: and in their absorbing desire that government should “derive its powers from the consent of the governed,” they too far lost sight of the danger that even such a government might own, rather than be owned by, the people—might be the master rather than the servant of the people. A poor consolation is it to the citizen of Pennsylvania, distressed and impoverished under taxes to defray the cost of government railroads and canals, that his is a free government and a free nation! It is *individual freedom* which he prizes, and of that his free government and free nation have robbed him. A poor consolation is it to him who finds his pursuits and property at the disposal of his government, that it is a government of the people’s choice, and that the people have had the sorry privilege of creating their own masters. As instances of the perversion and usurpation of power by our American governments, and of their violations of the natural rights of their subjects and of the laws of trade, these governments, like those of Europe, build railroads and canals, establish schools and various other institutions, and undertake to regulate the currency and the prices of goods.

That governments involving themselves in these various and illegitimate interests should possess a vast patronage, and that the emoluments and honors in the whole train of offices by which they are administered should excite the intensest desire amongst those who hope to participate in them, need no proof. And scarcely less obvious is it, that if such governments be democratic, the parties which seek to acquire or retain the control of them, must divide between themselves nearly the whole of the people, and not only be able, but be as willing as highly stimulated jealousy and cupidity can make them, to overwhelm the efforts of the wise and good for social, political and moral improvement. I say this is true when the governments are democratic. It is more emphatically so in such case; for then, the whole people participating in the government, the whole people are enlisted in the parties. And I will here add, that if governments shall be allowed to take to themselves this latitude of power, the less popular their form, the less evil is to be apprehended from the political parties that strive for the profits of this perverted and usurped power.

Now, if government were confined to its legitimate object of protecting each subject in his natural rights, and of affording him a secure pursuit after his happiness, a harmless rivalry would take the place of the all-assimilating and all-absorbing power of our political parties. The selfish interest to get and to hold the reins of such a government would be comparatively feeble, and felt by comparatively few.

Never has there been so favorable a time as the present to adopt measures for protecting the state of New-York hereafter from the curse of deeply selfish and all-controlling political parties. The people of this state have most emphatically said

in the recent elections, that the government of our state is not bound to make all the railroads and canals which local and selfish interests clamor for. It is but one step more for them to say that it is not the province of government to open *any* avenues for travel or trade, and that the interest it has in such avenues should be sold, and its hands deprived of the great power and washed clean of the corrupting patronage which attends the ownership of them by government. The rapid advancement of the people of this state during the last few years, in the knowledge of the true theory of government, has prepared them to take this step. Let the legislature of our state, at its approaching session, have the courage to try whether the people are not prepared to see government stripped of all its inappropriate and usurped functions, and confined to the single duty of protecting its subjects. The friends of this indispensable and truly democratic reform look at this crisis to such men as Colonel Young and Michael Hoffman. These gentlemen, to their own honor, and to that of the party which has so well sustained them at the late elections, have along with others made a good beginning toward arresting the usurpations of government. Let them now employ all their great influence to complete the good work, which they have so well begun.

We have now glanced at the mighty and pernicious influence of political parties under such power-perverting and power-usurping governments as ours and the governments of Europe. We have also glanced at the remedy for this evil. None can doubt that it would prove an effectual remedy. And its application to this evil, whilst it would harm no valuable interest, would involve the cure of other and scarcely less grievous evils. In manifold respects, it would be happy to circumscribe the powers of government and to simplify legislation to the extent proposed. Who can doubt that the people are themselves the most competent regulators of currency and prices!—that it is better for them to establish their schools and various other institutions than to give their money to government to do it for them!—and, as to all railroads and canals which the people would not build for themselves, we may be quite sure it would be unprofitable to build for them.

GERRIT SMITH.

[For the Democratic Reformer.]

HONESTY IN POLITICS.

“Honesty the best policy,” is a maxim very often quoted, but not very generally believed or practiced. Duplicity and double-dealing are *among* the established laws of trade and etiquette. “Men of the world” know this, and employ their utmost vigilance to protect themselves or to profit by it. But, like the doe in the fable, they have their blind side, and fall easy victims to the arts of the politician and the legislator.

Legislation is now responsible for most of the ills that afflict society. Former ages have left their impress on the present. We often do the *persons* of legislators the greatest injustice; but the *statute book*, in every essential particular, in its most important provisions, must remain as inviolate, and be regarded with the same reverence, as the law that was delivered from the top of Sinai. We perpetuate the errors of our ancestors, but forget their simple virtues. Especially we are wanting in honesty. Taxation, from a direct, has assumed an indirect and more oppressive form. Orders of nobility are established and endowed with peculiar privileges, under the pretence of supplying a currency or expounding the law. Fraud and oppres-

sion are every where practiced according to law—for the public good! When a man talks of reform, he is first told in a whisper that the time is *not yet*, and that he is putting the *party* in jeopardy. If this does not close his mouth, he is advertised as heretical. Sordid self-interest is a very active principle: hence those who become politicians for profit are among the most diligent, clamorous and influential of men, and control the legislation of the country.

Every department of trade and business—all the relations of life—are influenced and mainly controlled by legislation. Literature, science, morality, religion, submit willingly or unwillingly to its control. Men are commonly governed in their feelings, habits and actions, by the diversified influences which are brought to bear upon them, rather than by any political, moral or religious creed. It is then of the utmost importance that the government of the country should be confined to its appropriate sphere, and be properly administered.

Let the true man be bold and uncompromising. Let him declare the truth with a freedom that knows no fear—without compromise and without reserve. If William Leggett, if Samuel Young, if Michael Hoffman, had remained silent because their sentiments were unpalatable—if any motives of prudence or policy had induced them to fall in with the current of popular opinion, the day of our redemption would be long delayed; this country, and the world, too, would reap, for long ages to come, the bitter fruits of false doctrine and false legislation.

Honesty is one of the brightest of Christian virtues—it is virtue, it is religion; it is a passport to an enviable fame and a blessed immortality. The world is fast learning that to be **GREAT** is to be **GOOD**: And yet *politicians* dare not be *honest*. They are false in their friendship, false in their creed, false in their practice. Such men are flattered and caressed, it may be; but they are despised and will surely be betrayed. Time lends itself to no *bad* cause. It will cover with darkness or disgrace the deeds of all men who have any other polar star than principle.

The path of duty often seems to lead through difficulties and danger. But the truly **HONEST MAN** is a **BOLD MAN**.

Men see the truth, believe the truth, approve of the truth, and would follow the truth, but are afraid. Fear delays the work of reform at the present day, and yet the true man has no cause of fear. Unlike the good man of old, his reward is near at hand—victory shall speedily crown his labors—his epitaph shall soon be written. True, if we cast out devils, men will say we do it through Beelzebub, the prince of devils. They will call us *destructives, levellers, agrarians*; but the world knows how to account for their fears.

Every generation has been the witness of some important movement. To bring honesty into politics is the work of this age—Religion and humanity enjoin the performance of it.

B.

Wyoming, 1844.



